

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:LM:F:BOS:POSTF-150495-01
Pcolleran

date: APR - 4 2002

to: Large and Mid-Sized Business Operating Division
Revenue Agent Steven E. Dempster
LMSB Group 1544

from: Associate Area Counsel
(Financial Services: Boston)

subject: [REDACTED] LLC
EIN [REDACTED]
UIL 6231.07-00
Tax Matters Partner
Taxable Year Ended: August 31, [REDACTED]

This memorandum responds to your request for assistance dated September 7, 2001 requesting guidance as to the identity of the tax matters partner of the limited liability company, [REDACTED] LLC for its taxable year ended August 31, [REDACTED]. This memorandum should not be cited as precedent.

FACTS

[REDACTED] LLC ("[REDACTED]") is a limited liability company ("LLC") engaged in the [REDACTED] business, organized under the laws of the State of [REDACTED]. For its taxable year ended August 31, [REDACTED] filed Form 1065, U.S. Partnership Return of Income. [REDACTED] is currently under audit for its taxable year ended August 31, [REDACTED].

There were [REDACTED] members of [REDACTED] during its taxable year ended August 31, [REDACTED]. The [REDACTED] members and their respective share of [REDACTED]'s capital at the close of the taxable year were as follows: [REDACTED] Inc., a domestic subchapter "C" corporation with a [REDACTED]% share of capital; [REDACTED] Corporation, a domestic subchapter "C" corporation with a [REDACTED]% share of capital; [REDACTED], an individual citizen or resident of the United States with no interest in capital; [REDACTED], a foreign corporation with

a [REDACTED] % share of capital; and [REDACTED] Inc. a domestic subchapter "S" corporation with a [REDACTED] % share of capital.

On the second page of its Form 1065 for its taxable year ended August 31, [REDACTED], [REDACTED] designated [REDACTED] Inc. as its Tax Matters Partner ("TMP").

[REDACTED], Inc. was a manager of [REDACTED] both during the taxable year ended August 31, [REDACTED] and at the time the Form 1065 for that period was filed.

The [REDACTED] members of [REDACTED] for its taxable year ended August 31, [REDACTED] have either sold or transferred their interests and are no longer members of [REDACTED].

LAW AND ANALYSIS

In order to achieve consistent treatment of all partners in a partnership and to alleviate the administrative burden of determining partnership-related tax issues at the individual partner level, Congress enacted the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA"), Pub. L. No. 97-248, § 402(a), 96 Stat. 324, codified as I.R.C. § 6221 through 6233. See Chimble v. Commissioner, 177 F.3d 119, 120-21 (2d Cir. 1999). Section 6221 specifically provides that except as otherwise provided the tax treatment of any partnership item shall be determined at the partnership level.

For tax years ending after August 5, 1997, the TEFRA audit procedures do not apply (unless the partnership elects to have them apply) to a partnership consisting of ten or fewer partners each of whom is an individual (other than a nonresident alien), a C corporation, or an estate of a deceased partner. Since [REDACTED]'s members include a foreign corporation and a subchapter "S" corporation it does not qualify for the small partnership exception of section 6231(a) and is thus subject to TEFRA procedures.

The rules for designating a tax matters partner ("TMP") for a LLC are the same that apply to a partnership. Treas. Reg. § 301.6231(a)(7)-2. In applying the partnership rules to an LLC, only a member-manager of a LLC is treated as a general partner.

A member-manager is defined as a member (i.e., a person who owns an interest in the LLC) who alone or together with others, is vested with the continuing exclusive authority to make the management decisions necessary to conduct the business for which

the organization was formed. [REDACTED] Inc. was a manager of [REDACTED] both during the taxable year ended August 31, [REDACTED] and at the time the Form 1065 for that period was filed.

Section 6231(a)(7) provides that the TMP of a partnership is the general partner designated as the TMP by the partnership in accordance with the regulations.

Treas. Reg. § 301.6231(a)(7)-1 sets forth the rules for designating a TMP. In order to be designated the TMP, the person must have been a general partner at some time during the taxable year for which the designation is made or is a general partner at the time the designation is made. Treas. Reg. § 301.6231(a)(7)-1(b). The partnership may designate a TMP for a partnership taxable year on the partnership return. Treas. Reg. § 301.6231(a)(7)-1(c). On the second page of its Form 1065 for its taxable year ended August 31, [REDACTED] [REDACTED] designated [REDACTED] Inc. as its TMP.

A partner is defined in I.R.C. § 6231(a)(2) as:

(A) a partner in the partnership, and

(B) any other person whose income tax liability under subtitle A is determined in whole or part by taking into account directly or indirectly partnership items of the partnership.

[REDACTED] Inc. while not presently a member of [REDACTED] has an interest in the outcome of any proceeding for the taxable year ended August 31, [REDACTED] since its income tax liability will be effected by any adjustments. Therefore, [REDACTED] Inc. is still a partner (member) of [REDACTED] for the purpose of the TEFRA procedures.

The designation of a partner (member) as the TMP for a specific taxable year may only be terminated as provided for in Regulations. Treasury Regulation § 301.6231(a)(7)-1 (1) (dealing with termination of designation) provides that a designation of a TMP for a taxable year remains in effect until -

- (i) The death of the designated tax matters partner;
- (ii) An adjudication by a court of competent jurisdiction that the individual designated as the tax matters partner is no longer capable of managing the

individual's person on estate;

- (iii) The liquidation or dissolution of the tax matters partner, if the tax matters partner is an entity;
- (iv) The partnership items of the tax matters partner became non-partnership items under section 6231(c) (relating to special enforcement areas); or
- (v) The day on which -
 - (A) The resignation of the tax matters partner under paragraph (i) of this section,
 - (B) A subsequent designation under paragraph (d), (e), or (f) of this section; or
 - (C) A revocation of the designation under paragraph (j) of this section becomes effective.

None of the events set forth in Treas. Reg. § 301.6231(a)(7)-1 (l) have occurred and, therefore, [REDACTED], Inc. remains the TMP for [REDACTED]'s taxable year ended August 31, [REDACTED].

If we can be of further assistance please contact the attorney assigned to this matter, Paul Collieran at (617) 565-7838.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

BARRY J. LATERMAN
Acting Associate Area Counsel
(Large and Mid-Size Business)

By: _____
PAUL COLLERAN
Attorney (LMSB)